

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In Re: Tashanna B. Golden)	
<i>fka</i> Tashanna B. Pearson)	
)	
)	Case No. 16-40809 (ESS)
<u>Debtor,</u>)	
)	
Tashanna B. Golden)	Chapter 7
<i>fka</i> Tashanna B. Pearson on behalf of herself)	
and all others similarly situated)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. 17-1005 (ESS)
)	
Firstmark Services LLC, GS2 2016-A)	
(GS2), National Collegiate Student Loan)	
Trust 2006-4 (NCT 2006), Pennsylvania)	
Higher Assistance Agency, d/b/a)	
American Education Services,)	
)	
Defendants.)	
)	

**DECLARATION OF H. PETER HAVELES, JR. IN OPPOSITION
TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

I, H. Peter Haveles, Jr., state as follows:

1. I am admitted to practice before the Courts of the State of New York, and am a member of the Eastern District of New York. I am a member of McDermott Will and Emery, LLP (“McDermott”), attorneys for defendant Pennsylvania Higher Education Assistance Agency (“PHEAA”). I have personal knowledge of the facts set forth herein. I submit this Declaration in support of PHEAA’s opposition to Plaintiff’s Motion for Class Certification (the “Motion”).

2. I submit this declaration to authenticate the exhibits that PHEAA is submitting to the Court in opposition to the Motion and that PHEAA cites in its accompanying memorandum of law. I have personal knowledge of the facts set forth herein.

3. A number of these exhibits contain personal information of the plaintiff and six putative class members or have been designated as Confidential in accordance with the Protective Order entered in this proceeding. PHEAA is filing those exhibits under seal in accordance to PHEAA's accompanying Motion to Seal. Those exhibits are Exhibits 3–7, 9, 11, 13–14, 16–23, 25–64, 67–71, and 73 annexed hereto.

4. Attached as Exhibit 1 is a true and correct copy of the excerpted deposition transcript of Todd Mosko, dated August 29, 2019, taken in this proceeding.

5. Attached as Exhibit 2 is a true and correct copy of the excerpted deposition transcript of Tashanna Golden, dated September 30, 2020, taken in this proceeding.

6. Attached as Exhibit 3 is a true and correct copy of the Education One Loan Request/Credit Agreement of Tashanna Golden, dated September 21, 2006, bearing bates numbers PHEAA0000663 through PHEAA0000678.

7. Attached as Exhibit 4 is a true and correct copy of the 2006-4 Pool Supplement by Bank One, N.A., dated December 7, 2006, bearing bates numbers 2006-4_Golden_000543 through 2006-4_Golden_000545.

8. Attached as Exhibit 5 is a true and correct copy of an email chain between Bonnie Coulter and Tashanna Golden, dated December 20, 2016, bearing bates numbers Golden_00228 through Golden_00230.

9. Attached as Exhibit 6 is a true and correct copy of an Education One Loan Request/Credit Agreement, bearing bates numbers PHEAA0000646 through PHEAA0000654.

10. Attached as Exhibit 7 is a true and correct copy of the loan financial activity for Tashanna Golden, bearing bates numbers 2006-4_Golden_001238 through 2006-4_Golden_001247.

11. Attached as Exhibit 8 is a true and correct copy of the excerpted deposition transcript of Richard Neely, dated September 24, 2019, taken in the above captioned matter.

12. Attached as Exhibit 9 is a true and correct copy of the Amended and Restated Guaranty Agreement between the Education Resources Institute, Inc. and Bank One, National Association, dated April 17, 2002, bearing bates numbers 2006-4_Golden_001099 through 2006-4_Golden_001137.

13. Attached as Exhibit 10 is a true and correct copy of the Declaration of Anthony Henry with exhibits thereto, dated October 2, 2020, that Mr. Henry provided in response to the subpoena that defendants served on the University of Pennsylvania Law School.

14. Attached as Exhibit 11 is a true and correct copy of the National Center for Education Statistics IPEDS Data Center printout for the University of Pennsylvania and University of Pennsylvania website printout, bearing bates numbers Golden_00043 through Golden_00059.

15. Attached as Exhibit 12 is a true and correct copy of the excerpted deposition transcript of Anthony Henry, dated November 13, 2020, taken in this proceeding.

16. Attached as Exhibit 13 is a true and correct copy of a letter from American Education Services to Tashanna Golden, dated March 2, 2016, bearing bates numbers PHEAA0000300 through PHEAA0000301.¹

¹ American Education Services is the trade name that PHEAA uses for its servicing business.

17. Attached as Exhibit 14 is a true and correct copy of an Order of Discharge and Final Decree as to Tashanna Golden, dated August 3, 2016, bearing bates numbers PHEAA0000719 through PHEAA0000720.

18. Attached as Exhibit 15 is a true and correct copy of the excerpted deposition transcript of Brenna Ryan, dated June 1, 2021, taken in this proceeding.

19. Attached as Exhibit 16 is a true and correct copy of the promissory note for Ms. Ryan, dated October 5, 2000, bearing bates numbers PHEAA0011133 through PHEAA0011134.

20. Attached as Exhibit 17 is a true and correct copy of the note disclosure statement for Ms. Ryan's loan from Fleet National Bank, dated November 9, 2000, bearing bates numbers PHEAA0011144 through PHEAA0011145.

21. Attached as Exhibit 18 is a true and correct copy of the loan certification form and note disclosure statement for Ms. Ryan, dated August 20, 2001, bearing bates number PHEAA0011123 through PHEAA0011128.

22. Attached as Exhibit 19 is a true and correct copy of the promissory note for Ms. Ryan, dated July 5, 2001, bearing bates numbers PHEAA0011044 through PHEAA0011046.

23. Attached as Exhibit 20 is a true and correct copy of Ms. Ryan's voluntary petition for bankruptcy in the Eastern District of Arkansas, No. 4:10-bk-16237, Dkt. No. 1, dated August 27, 2010.

24. Attached as Exhibit 21 is a true and correct copy of Ms. Ryan's discharge order from the Eastern District of Arkansas, No. 4:10-bk-16237, dated December 7, 2010, bearing bates numbers PHEAA0011150 through PHEAA0011151.

25. Attached as Exhibit 22 is a true and correct copy of an email from Ms. Ryan to PHEAA, dated May 18, 2012, bearing bates number PHEAA0011141.

26. Attached as Exhibit 23 is a true and correct copy of an email from Ms. Ryan to PHEAA, dated October 28, 2016, bearing bates numbers PHEAA0011116 through PHEAA0011117.

27. Attached as Exhibit 24 is a true and correct copy of the excerpted deposition transcript of Allison Torseth, dated December 7, 2020, taken in this proceeding.

28. Attached as Exhibit 25 is a true and correct copy of the note disclosure statement for Ms. Torseth's loan from Union Federal Savings Bank, dated January 10, 2008, bearing bates number PHEAA0009266.

29. Attached as Exhibit 26 is a true and correct copy of the note disclosure statement for Ms. Torseth's loan from JPMorgan Chase Bank, dated July 14, 2008, bearing bates numbers PHEAA0009361 through PHEAA0009362.

30. Attached as Exhibit 27 is a true and correct copy of the note disclosure statement for Ms. Torseth's loan from JPMorgan Chase Bank, dated August 21, 2008, bearing bates number PHEAA0009203.

31. Attached as Exhibit 28 is a true and correct copy of the note disclosure statement for Ms. Torseth's loan from JPMorgan Chase Bank, dated October 7, 2008, bearing bates number PHEAA0009294.

32. Attached as Exhibit 29 is a true and correct copy of the loan application for Ms. Torseth's loan from JPMorgan Chase Bank, dated July 14, 2008, bearing bates number PHEAA0009259 through PHEAA0009262.

33. Attached as Exhibit 30 is a true and correct copy of the note disclosure statement for Ms. Torseth's loan from JPMorgan Chase Bank, dated January 8, 2009, bearing bates number PHEAA0009263.

34. Attached as Exhibit 31 is a true and correct copy of the loan application for Ms. Torseth's loans from JPMorgan Chase Bank, dated January 1, 2009, bearing bates number PHEAA0009301 through PHEAA0009304.

35. Attached as Exhibit 32 is a true and correct copy of an Order of Discharge and Final Decree as to Allison Torseth, dated February 6, 2010, bearing bates number PHEAA0009337.

36. Attached as Exhibit 33 is a true and correct copy of an Amended Order of Discharge and Final Decree as to Allison Torseth, dated September 6, 2017, bearing bates number PHEAA0009298.

37. Attached as Exhibit 34 is a true and correct copy of the loan activity log for Allison Torseth, bearing bates numbers PHEAA0009316 through PHEAA0009331.

38. Attached as Exhibit 35 is a true and correct copy of the loan application for Matthew Guarino's loans from Bank of America, dated November 24, 2006, bearing bates numbers PHEAA0009891 through PHEAA0009892.

39. Attached as Exhibit 36 is a true and correct copy of the school certification for Matthew Guarino's loans from Bank of America, dated December 9, 2006, bearing bates number PHEAA0009710.

40. Attached as Exhibit 37 is a true and correct copy of the note disclosure statement for Mr. Guarino's loan from Bank of America, dated December 22, 2006, bearing bates number PHEAA0009707.

41. Attached as Exhibit 38 is a true and correct copy of the loan credit agreement for Mr. Guarino's loan from Bank of America, dated December 4, 2006, bearing bates numbers PHEAA0009893 through PHEAA0009899.

42. Attached as Exhibit 39 is a true and correct copy of the loan detail information for Mr. Guarino's loan from Bank of America, dated October 5, 2020, bearing bates number PHEAA0009890.

43. Attached as Exhibit 40 is a true and correct copy of the note disclosure statement for Mr. Guarino's loan from Bank of America, dated August 9, 2007, bearing bates number PHEAA0009722.

44. Attached as Exhibit 41 is a true and correct copy of the school certification for Matthew Guarino's loans from Bank of America, dated May 31, 2007, bearing bates number PHEAA0009723.

45. Attached as Exhibit 42 is a true and correct copy of the note disclosure statement for Mr. Guarino's loan from Bank of America, dated August 22, 2007, bearing bates number PHEAA0009879.

46. Attached as Exhibit 43 is a true and correct copy of the bankruptcy docket for John and Donna Guarino, No. 2-09-22674-PRW in the Western District of New York, dated November 3, 2014, bearing bates number PHEAA0009885.

47. Attached as Exhibit 44 is a true and correct copy of the bankruptcy docket for Matthew Guarino, No. 2-11-21438-JCN in the Western District of New York, dated November 3, 2014, bearing bates number PHEAA0009889.

48. Attached as Exhibit 45 is a true and correct copy of the loan activity log for Matthew Guarino, bearing bates numbers PHEAA0009769 through PHEAA0009874.

49. Attached as Exhibit 46 is a true and correct copy of the note disclosure statement for Yvonne Joseph's loan from KeyBank National Association, dated August 15, 2005, bearing bates numbers PHEAA0010920 through PHEAA0010923.

50. Attached as Exhibit 47 is a true and correct copy of the promissory note for Yvonne Joseph's loan from KeyBank National Association, dated August 30, 2005, bearing bates numbers PHEAA0010935 through PHEAA0010942.

51. Attached as Exhibit 48 is a true and correct copy of Ms. Joseph's Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines in the Eastern District of New York, No. 1-10-48480-ess, Dkt. No. 1, dated September 3, 2010, bearing bates numbers PHEAA0010901 through PHEAA0010904.

52. Attached as Exhibit 49 is a true and correct copy of an Order of Discharge and Final Decree as to Yvonne Joseph, dated December 14, 2010, bearing bates numbers PHEAA0010895 through PHEAA0010896.

53. Attached as Exhibit 50 is a true and correct copy of the loan activity log for Yvonne Joseph, bearing bates numbers PHEAA0010910 through PHEAA0010919.

54. Attached as Exhibit 51 is a true and correct copy of the loan application for Miriam Redling's loans from The Access Group, dated May 28, 1998, bearing bates number PHEAA0010815.

55. Attached as Exhibit 52 is a true and correct copy of the disclosure statement for Miriam Redling's loan from The Access Group, dated October 6, 1997, bearing bates number PHEAA0010794.

56. Attached as Exhibit 53 is a true and correct copy of the note disclosure statement for Miriam Redling's loan from The Access Group, dated June 10, 1998, bearing bates number PHEAA0010793.

57. Attached as Exhibit 54 is a true and correct copy of the loan application for Miriam Redling's loan from The Access Group, dated January 11, 2000, bearing bates numbers PHEAA0010813 through PHEAA0010814.

58. Attached as Exhibit 55 is a true and correct copy of a letter received by AES regarding Ms. Redling's bankruptcy proceedings, dated January 30, 2008, bearing bates number PHEAA0010810.

59. Attached as Exhibit 56 is a true and correct copy of the loan activity log for Miriam Redling, bearing bates numbers PHEAA0010575 through PHEAA0010650.

60. Attached as Exhibit 57 is a true and correct copy of the loan application and promissory note for Sergey Yangolenko's loan from Key Bank USA, dated December 27, 2003, bearing bates numbers PHEAA0009410 through PHEAA0009415.

61. Attached as Exhibit 58 is a true and correct copy of the note disclosure statement for Sergey Yangolenko's loan from Key Bank USA, dated January 22, 2004, bearing bates number PHEAA0009402.

62. Attached as Exhibit 59 is a true and correct copy of the note disclosure statement for Sergey Yangolenko's loan from Key Bank USA, dated May 24, 2004, bearing bates number PHEAA0009416.

63. Attached as Exhibit 60 is a true and correct copy of the school certification for Sergey Yangolenko's loan from Key Bank USA, dated May 11, 2004, bearing bates number PHEAA0009429.

64. Attached as Exhibit 61 is a true and correct copy of a letter from AES to Sergey Yangolenko, dated January 8, 2008, bearing bates number PHEAA0009422.

65. Attached as Exhibit 62 is a true and correct copy of the school certification for Sergey Yangolenko's loan from Key Bank USA, dated June 8, 2005, bearing bates number PHEAA0009388.

66. Attached as Exhibit 63 is a true and correct copy of an Order of Discharge and Final Decree as to Sergey Yangolenko, dated August 27, 2012, bearing bates numbers PHEAA0009445 through PHEAA0009446.

67. Attached as Exhibit 64 is a true and correct copy of the loan activity log for Sergey Yangolenko, bearing bates numbers PHEAA0009436 through PHEAA0009444.

68. Attached as Exhibit 65 is a true and correct copy of the excerpted deposition transcript of Elaine Varas, dated January 8, 2021, taken in this proceeding.

69. Attached as Exhibit 66 is a true and correct copy of the excerpted deposition transcript of Mark Kantrowitz, dated August 21, 2020, taken in this proceeding.

70. Attached as Exhibit 67 is a true and correct copy of the loan credit agreement for Allison Torseth, dated June 12, 2008, bearing bates number PHEAA0009300.

71. Attached as Exhibit 68 is a true and correct copy of the loan credit agreement for Matthew Guarino, dated December 4, 2006, bearing bates numbers PHEAA0009697 through PHEAA0009703.

72. Attached as Exhibit 69 is a true and correct copy of Miriam Redling's 1098-E tax forms from 2015 to 2018, bearing bates numbers PHEAA0010651 through PHEAA0010658.

73. Attached as Exhibit 70 is a true and correct copy of Matthew Guarino's 1098-E tax forms for 2016, bearing bates number PHEAA0009460.

74. Attached as Exhibit 71 is a true and correct copy of the co-signor application for Sam Green, dated September 21, 1997, bearing bates numbers PHEAA0010818.

75. Attached as Exhibit 72 is a true and correct copy of the excerpted deposition transcript of John DeBois, dated September 3, 2020, taken in this proceeding.

76. Attached as Exhibit 73 is a true and correct copy of the loan credit agreement for Miriam Redling, dated September 17, 1998, bearing bates numbers PHEAA0010816 through PHEAA0010817.

77. In May 2020, we produced on behalf of PHEAA to plaintiff's counsel in connection with discovery in this proceeding a comprehensive database identifying any borrower who filed for bankruptcy between 2005 and May 21, 2020 and for whom PHEAA serviced a loan. All of the loans in the schedule are loans that PHEAA serviced, but which are owned by third parties, *i.e.*, PHEAA's clients. The native file for that database bears the bates number PHEAA0009176.

78. The database provides plaintiff with the name of all the owners of the loans of such borrowers. All of those loan owners are institutions and trusts resident in the United States. In the database, approximately 113 of the 259 total loan owners are banks as opposed to asset-backed trusts.

79. In coordination with Ms. Golden's counsel to identify two individuals who are putative class members for depositions, PHEAA identified and produced in accordance with this Court's September 3, 2020 Order the loan files in PHEAA's possession for six individuals. Those six individuals are Brenna Ryan, Allison Torseth, Matthew Guarino, Yvonne Joseph, Miriam Redling and Sergey Yangolenko.

80. Five of the six putative class members for which discovery occurred (Brenna Ryan, Allison Torseth, Matthew Guarino, Yvonne Joseph and Sergey Yangolenko) exceeded the cost of attendance based on PHEAA's records. With respect to Miriam Redling, the IPEDS data utilized by Mr. DeBois in his analysis lacks any data with respect to cost of attendance for years prior to

2000. Therefore, no determination can be made with respect to whether Ms. Redling's loans exceeded the cost of attendance in 1997 or 1998. However, Ms. Redling's loans did not exceed the cost of attendance in 2000.

I declare the foregoing statements to be true under the penalties of perjury.

Dated: June 29, 2021

/s/ H. Peter Haveles, Jr.
H. PETER HAVELES, JR.